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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
5

6 **DELORES ARZAMENDI,**

7 **Plaintiff,**

8 **v.**

9 **WELLS FARGO BANK, N.A.,**

10 **Defendant.**  
11

**1:17-cv-01485-LJO-SKO**

**MEMORANDUM DECISION AND  
ORDER GRANTING RELIEF FROM  
FINAL JUDGMENT**

**(ECF No. 48)**

12  
13 **I. INTRODUCTION**

14 This case concerns pro se Plaintiff Delores Arzamendi's case against Defendant Wells Fargo  
15 Bank, N.A., for damages and equitable relief. Plaintiff filed her complaint in the Superior Court of  
16 California in the County of Merced on October 3, 2017, ECF No. 1 at 9, and Defendant removed to this  
17 Court on November 2, 2017. *Id.* at 1-2. On March 8, 2018, the Court dismissed Plaintiff's complaint  
18 with leave to amend. ECF No. 21. Plaintiff filed a first amended complaint ("FAC") on April 4, 2018.  
19 ECF No. 22. The Court dismissed the FAC on June 29, 2018, granting Plaintiff a final opportunity to  
20 amend only as to her elder abuse claim within 30 days. ECF No. 37. On August 6, 2018, the Court  
21 issued a judgment and order closing this case for failure to prosecute. ECF Nos. 43, 44. On September  
22 12, 2018, Plaintiff filed a document titled "Response to Motion to Dismiss," ECF No. 46, which the  
23 Court construed as a motion for relief from final judgment under Federal Rule of Civil Procedure  
24 ("Rule") 60(b), and struck the motion because it was unsigned. ECF No. 47. Plaintiff filed this renewed  
25 motion for relief from judgment on October 24, 2018. ECF No. 48. Defendant has not filed a response.

## II. LEGAL STANDARD AND ANALYSIS

1  
2 Plaintiff seeks relief from the Court's August 6, 218, entry of judgment in Defendant's favor  
3 under Rule 60. Under this Rule, a court may, on motion, "relieve a party . . . from a final judgment,  
4 order, or proceeding" for reasons including "mistake, inadvertence, surprise, or excusable neglect" and  
5 "any other reason that justifies relief." Fed. R. Civ. P. 60(b). Excusable neglect "encompasses situations  
6 in which the failure to comply with a filing deadline is attributable to negligence, and includes omissions  
7 caused by carelessness." *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009). Rule 60(b) "is  
8 remedial in nature and . . . must be liberally applied." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984);  
9 *see also United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir.  
10 2010) (expressing the strong preference for resolving cases on the merits). The moving party is however  
11 not "absolved from the burden of demonstrating that, in a particular case, the interest in deciding the  
12 case on the merits should prevail over the very important interest in the finality of judgments." *TCI*  
13 *Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001), *overruled on other grounds by*  
14 *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001).

15 The determination of whether neglect is excusable under Rule 60(b) "is at bottom an equitable  
16 one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Servs.*  
17 *Co. v. Brunswick Assocs. Ltd.*, 508 U.S. 380, 394 (1993). A court should consider at least the following  
18 four factors: "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its  
19 potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in  
20 good faith." *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000) (citing *Pioneer*, 507 U.S.  
21 at 395); *see Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (concluding that the  
22 *Pioneer* standard applies to excusable neglect determinations under Rule 60(b)(1)). As the excusable  
23 neglect determination is an equitable one, additional factors may be considered at the Court's discretion.  
24 *See Pioneer*, 507 U.S. at 395.

25 Plaintiff explains that health issues prevented her from filing an amended complaint or

1 requesting an extension. Specifically, Plaintiff asserts that she was hospitalized on several occasions in  
2 2018, including from July 3 to 10, August 13 to 16, September 8 to 10, and October 7 to 9, and was in a  
3 transitional care facility from July 10 to 31. ECF No. 48 at 4. The period Plaintiff spent in transitional  
4 care is supported by medical records.<sup>1</sup> *Id.* at 9. The medical records submitted by Plaintiff do not show  
5 the specific dates she was hospitalized in 2018, apart from the transitional care stay in July 2018, but do  
6 indicate that Plaintiff had three inpatient and one observational medical visits between July 10, 2018,  
7 and October 9, 2018. *Id.* at 10. Plaintiff also states that she was again hospitalized as of October 21,  
8 2018, while drafting the instant motion. *Id.*

9         Weighing the equitable factors, starting with those specified in *Pioneer*, the Court finds that  
10 Plaintiff's neglect was excusable. First, the reason for Plaintiff's delay, i.e. medical issues requiring  
11 hospitalization during the period immediately before Plaintiff's amended complaint was due, is  
12 compelling and adequately supported by medical records. Illness is often recognized as an acceptable  
13 justification for excusable neglect. *See, e.g., Gravatt v. Paul Revere Life Ins. Co.*, 101 F App'x 194, 196  
14 (9th Cir. 2004). Second, the time elapsed between Plaintiff's most recent filing deadline and her initial  
15 request for relief from judgment, approximately six weeks, is not excessive, and is unlikely to have an  
16 undue impact on further proceedings.<sup>2</sup> Plaintiff acted with reasonable haste to explain her neglect to the  
17 Court and to seek relief. Third, Defendant has not offered any reason why it would be prejudiced by  
18 granting the relief requested. Fourth, there is no indication that Plaintiff is acting in bad faith.

19         Finally, the Court also takes into account Plaintiff's status as a pro se litigant. Pro se litigants are  
20 not exempt from the duty to meet deadlines and must comply with procedural requirements. *See United*

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21  
22 <sup>1</sup> The records provided by Plaintiff list her as an inpatient in a transitional care facility from July 10, 2018 through July 31,  
23 2017. ECF No. 48 at 9. The Court presumes this is a typographical error, and that the records should indicate that Plaintiff  
was in the transitional care facility from July 10 to July 31 of 2018.

24 <sup>2</sup> Some courts have measured the length of delay from the date of a case's dismissal, *see, e.g., CEP Emery Tech Investors*  
25 *LLC v. JP Morgan Chase Bank, N.A.*, No. C 09-4409 SBA, 2011 WL 1226028, at \*1-4 (N.D. Cal. Apr. 1, 2011), while others  
include the time elapsed since a party missed its deadline, *see, e.g., Harvest v. Castro*, 531 F.3d 737, 747 (9th Cir. 2008).  
Here, the difference in time between the two approaches is minimal, and under either approach the Court would conclude that  
the delay does not weigh against Plaintiff, particularly considering her ongoing medical problems over that time period.

1 *States v. Merrill*, 746 F.2d 458, 465 (9th Cir. 1984) (citing *Faretta v. California*, 422 U.S. 806, 834 n.46  
2 (1975)). The Court recognizes, however, that a pro se plaintiff is less likely than a party represented by  
3 counsel to be capable of notifying the Court of an incapacitating illness and seeking an extension. The  
4 equitable factors weigh in Plaintiff's favor, and the Court accordingly finds Plaintiff's neglect in failing  
5 to file an amended complaint excusable under Rule 60(b).

### 6 **III. CONCLUSION AND ORDER**

7 For the foregoing reasons, the Court GRANTS Plaintiff's motion for relief from final judgment.  
8 The Court's decision and order closing this case, ECF No. 43, and the judgment, ECF No. 44, are  
9 VACATED. The Clerk of Court is directed to REOPEN this case. Plaintiff may file a **final** amended  
10 complaint. As Plaintiff has already had ample time to consider her amended complaint, the amended  
11 complaint is due on or before 20 days from the date of this order. This will be Plaintiff's last  
12 opportunity. There will be no further extensions or opportunities to amend.

13 IT IS SO ORDERED.

14 Dated: **November 15, 2018**

**/s/ Lawrence J. O'Neill**  
UNITED STATES CHIEF DISTRICT JUDGE